IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2651 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)
Versus
KANUBHAI B ACHARYA & 2 - Respondent(s)

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Appearance :
MR LB DABHI, AGP for Petitioners.
MR CB DASTOOR for Respondent(s) : 1,
DELETED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/11/2005

ORAL JUDGMENT

1.The petitioner has filed this petition under Article 226 & 227 of the Constitution of India praying for quashing and setting aside the award dated 07.06.1995 passed by the Presiding Officer, 4th Labour Court, Ahmedabad in Reference (LCA) No. 1332 of 1981. The Labour Court has ordered to reinstate the respondent No. 1 and 2 with full back wages vide its award dated 07.06.1995.

2.Notice was issued by this Court on 03.04.1997 and interim relief with regard to back wages was granted. The petition was thereafter admitted on 05.08.1997 and interim relief was ordered to be continued. Mr. C.B. Dastoor, learned advocate appears for the respondent No. 1. Despite service of rule on the respondent No. 2, nobody appears on his behalf.

3.Learned advocate Mr. C.B. Dastoor for the respondent No. 1 has rightly not pressed the relief with regard to back wages as in para 4 of the petition, it is specifically stated that the respondent No. 1 was in employment with the Ahmedabad Municipal Transport Service run by the Ahmedabad Municipal Corporation w.e.f. 20.10.1984 as daily wager and thereafter as regularised Conductor having badge No.1240. He was drawing salary in junior grade during the daily wage period and thereafter regular pay continuously from 22.10.1984 to 01.04.1995. Thus, he was in employment with the Municipal Corporation, Ahmedabad and as such, the award qua the respondent No. 1 with regard to back wages is not sustainable as he was gainfully employed. The respondent No. 1 was retrenched after 1997. Mr. Dastoor has, therefore, submitted that the petitioner may be directed to consider the case of the respondent No. 1 for reinstatement without back wages.

4.Mr. L.B. Dabhi, learned Assistant Government Pleader appearing for the petitioner, in response to the said suggestion, has submitted that once the petitioner has accepted another assignment, there is no question of considering his case for reinstatement. He has, however, submitted that as and when the vacancies arise, the case of the respondent No. 1 will be considered. He has further submitted that despite service of notice as well as rule, the respondent No. 2 has not appeared and hence, the award qua the respondent No. 2 is required to be quashed and set aside.

5.After having gone through the award passed by the Labour Court and after having gone through the contentions and averments made in the memo of the petition and after having heard learned advocates appearing for the respective parties, the Court is of the view that neither the

respondent No. 1 nor respondent No. 2 are entitled for back wages. There is no question of reinstatement of respondent No. 2 as he might have been employed in some other establishment and that is why he has not appeared before this Court despite service of notice. As far as respondent No. 1 is concerned, he was gainfully employed right from 1984 to 1997. In this view of the subsequent employment, the respondent No. 1 is not entitled for back wages. However, considering the facts and circumstances of the case and the fact that the respondent No. 1 is not in employment after 1997, the petitioner may consider the case of the respondent No. 1 sympathetically as and when the vacancies arise in the organization and the respondent No. 1 may be informed accordingly by the petitioner keeping in mind the relevant rules and regulations.

6.With this observation, the petition is allowed to the above extent. Rule is made absolute to the above extent without any order as to costs.

[K.A. PUJ, J.]

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